

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

COMMISSIONER OF INSURANCE
FOR THE STATE OF MICHIGAN,

Petitioner,

File No. 98-88265-CR

v

Hon. James. R. Giddings

MICHIGAN HEALTH MAINTENANCE
ORGANIZATION PLANS, INC., a
Michigan health maintenance organization,
doing business as OmniCare Health Plan,

Respondent.

The Attorney General's Claim for Attorney's Fees is a Class 1 Priority Claim

The Department of Attorney General has filed a Proof of Claim in this matter on behalf of its Insurance & Banking Division for attorney's fees in the amount of \$130,003.05. This claim seeks reimbursement of reasonable attorney's fees for legal services rendered as part of the actual and necessary costs of preserving or recovering assets for the benefit of the OmniCare Health Plan. The claimed attorney's fees are for legal services provided by the Insurance & Banking Division in Fiscal Year ("FY") 2001-2002, FY 2002-2003, and FY 2003-2004. The Attorney General's Proof of Claim is supported by itemized time logs submitted by the attorneys in the Insurance & Banking Division who performed the legal services.

From the inception of this proceeding with the filing of the Verified Petition for Rehabilitation on July 30, 2001, until the law firm of Zausmer, Kaufman, August & Caldwell, P.C. was appointed as counsel for the Liquidator on January 6, 2005, the Attorney General's Insurance & Banking Division represented the Commissioner of the Office of Financial and Insurance Services in her capacity first as Rehabilitator of the OmniCare Health Plan, and

subsequently as Liquidator, and handled all of the outside legal work for the receiver. The Court noted in its January 6, 2005 Order Approving the Rates of Compensation of Zausmer, Kaufman, August & Caldwell, P.C. as Counsel to the Liquidator that:

Throughout the course of the Rehabilitation, the State of Michigan has substantially subsidized the receivership estate by providing legal services through the Insurance & Banking Division of the Department of Attorney General.

It is settled law that attorney fees and expenses which have been incurred in good faith may become a valid claim against the receiver. *Bogrette v Young*, 132 Mich App 431, 434-435; 347 NW2d 193 (1984). The legal work performed by the Attorney General's staff on behalf of the Commissioner during the time she was the court-appointed Rehabilitator and subsequent Liquidator is a legitimate cost and expense of administration, recognized as a Class 1 priority claim by the Insurance Code.

The Insurance Code requires that the Attorney General's claim be afforded Class 1 priority. MCL 500.8142 provides in pertinent part:

- (1) Except as provided in subsection (2), the priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for their payment before the members of the next class receive payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:
- (a) **Class 1. The costs and expenses of administration, including, but not limited to, the following:**
- (i) The actual and necessary costs of preserving or recovering the insurer's assets.
 - (ii) Compensation for all services rendered in the liquidation.
 - (iii) Any necessary filing fees.
 - (iv) The fees and mileage payable to witnesses.
 - (v) **Reasonable attorney's fees.** (Emphasis added.)

Attorney fees as a cost of administration have priority status in a receivership. As discussed *In re Dissolution of Henry Smith Floral Co*, 260 Mich 299, 301-302; 244 NW 480 (1932):

The receiver acts as the arm of the court and court retained power to compensate its officer and his legal advisors.

The compensation of a receiver and his attorneys is out of funds or property *in custodia legis*, and no lien, authorized by the court, on the funds or property has priority of such court administrative costs.

The fees of the receiver and the attorney for him are court expenses of the receivership and have priority of first lien receiver's certificates.

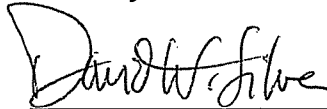
The Proof of Claim submitted by the Attorney General in this case should be classified and treated as a Class 1 priority claim.

Relief Requested

Based on the foregoing, the Attorney General requests that the Court recognize its proof of claim as a Class 1 priority claim.

Respectfully submitted,

Michael A. Cox
Attorney General

A handwritten signature in cursive script, appearing to read "David W. Silver", is written over a horizontal line.

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Date: June 22, 2005

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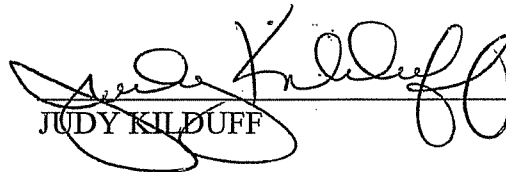
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PROOF OF SERVICE

The undersigned certifies that on June 22, 2005, she served a copy of a brief entitled The Attorney General's Claim for Attorney's Fees is a Class 1 Priority Claim, by Facsimile to (248) 851-0100 and by depositing the same in a United States Postal Depository in the city of Lansing, Michigan, enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

Amy M. Sitner
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Farmington Hills, MI 48334-2374


JUDY KILDUFF